IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA ALBANY DIVISION

GREGORY GILLIAN, in his official : capacity as Founder and President of : C.U.S.S. (Convicts, United, Stand Strong), :

:

Plaintiff,

: CIVIL ACTION FILE : NO. 1:07-CV-7 (WLS)

VS.

AUTRY PRISON MEDICAL STAFF EMPLOYEES, et al.,

:

Defendant. :

RECOMMENDATION

This is a section 1983 action brought by a plaintiff who must be considered to be a recreational litigator in this court.¹ Presently pending are motions to dismiss filed by the plaintiff and the defendant Dr. Moody who is believed to be the only remaining defendant. (Documents 11, 13, and 15). It is noted that as of this date no answer has been filed by the defendant.

Defendant alleges that the plaintiff had "three strikes" within the meaning of the Prison Litigation Reform Act ("PLRA") at the time he filed this action on January 8, 2007, and that he should therefore be denied *in forma pauperis* status. Out of an abundance of caution the court counts strikes at the end of an appeal or at the end of the time period in which to file an appeal of a dismissal. Thus the court is not sure that it agrees with defendant's computation of plaintiff's strikes at the time he filed this action. The court is certain however that the plaintiff presently has more than three strikes meaning that he must, in the future, pay the entire civil filing fee at the

¹Plaintiff has filed at least forty-four section 1983 actions in this court within the past two years.

time he commences any other section 1983 action or comply fully with § 1915(g) of the PLRA.

Federal Rule of Civil Procedure 41(a) provides in pertinent part that,

Subject to the provisions of Rule 23(e), of Rule 66, and of any statute of the United States, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of any answer or of a motion for summary judgment, which ever first occurs, . . .

There having been no answer or motion for summary judgment filed herein, plaintiff's motion to dismiss is binding on the court and his motion must therefore be **GRANTED**. Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable W. Louis Sands, Chief United States District Judge, WITHIN TEN (10) DAYS of receipt thereof.

SO RECOMMENDED, this 25th day of June 2007.

/s/ Richard L. Hodge

RICHARD L. HHODGE UNITED STATES MAGISTRATE JUDGE

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